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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,851	10/08/2004	Reinhard Berger	LUKP:126US	5850
24041	7590	04/28/2006	EXAMINER	
SIMPSON & SIMPSON, PLLC 5555 MAIN STREET WILLIAMSVILLE, NY 14221-5406			LEWIS, TISHA D	
			ART UNIT	PAPER NUMBER
			3681	

DATE MAILED: 04/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/711,851

Applicant(s)

BERGER ET AL.

Examiner

TISHA D. LEWIS

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-9, 11, 14-20 and 22-24 is/are rejected.
- 7) ☒ Claim(s) 5, 10, 12, 13 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

The following is a response to the request for reconsideration received on April 3, 2006.

#### ***Response to Arguments***

Applicant's arguments with respect to the rejection(s) of claim(s) 1-4, 7, 14, 15, 19, 20 and 22-24 under 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of applicant's argument withdrawing the Boll ('470) reference as prior art.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 6, 8, 9, 15-19, 20 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19917665A1 in view of Katou ('127). (As to claims 1, 2, 6, 11, 14-19, and 22-24), DE discloses a motor vehicle having an electrical machine (4) arranged between an engine clutch (7), a gearbox clutch (8), a drive unit (2), a clutch gearbox (3) and a power take off shaft (5) wherein the machine (4) is used to start the engine (2) with a slipping of the clutch (7) according to a speed value and temperature factor determined by a controller. The power take off shaft is disconnected from the

engine at this time, but DE does not disclose that the gearbox clutch (8) is slipping at this time, but after the engine is turned on.

Katou discloses a starter generator (60) that turns on an engine (10) or restarts the engine and a gearbox clutch (21) that can slip at restart of the engine to prevent the vehicle from moving (column 7, lines 16-19) which suggest that the power take off to the transmission is disconnected at this time until the clutch stops slipping. Katou discloses a single control unit that uses a program (Figure 2) to determine starting parameters (engine temperature) and clutch moment (slipping state of clutch). Katou discloses a threshold engine value (NO) defined for starting the engine.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the gearbox clutch of DE to provide a slipping state at engine startup in view of Katou to prevent the vehicle from moving suddenly.

As to claim 8, DE discloses the engine clutch (7) is turned on by the control unit when an engine start is required (driving mode).

As to claim 9, DE discloses that the engine clutch (7) provides a slipping torque via a travel (clutch traveling towards engagement while slipping) upon the starter generator providing torque to start the engine.

As to claim 20, DE discloses comparing the speed of the engine to the speed of the power take off input shaft (5).

Claims 3, 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE in view of Katou as applied to claim 1 above, and further in view of Hohn. DE

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in view of Katou discloses an engine starting arrangement, but does not disclose fuel/gas controlled by a controller to start the engine.

Hohn discloses a drive assembly wherein an electric machine is used to start an engine while a kickdown switch is turned on and an extreme acceleration is determined (gas pedal exceeds position, high fuel consumption) (column 2, lines 31-39).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have the engine of DE in view of Katou started with a kickdown switch turned on in view of Hohn to reduce the speed output of the engine to provide smooth transformation between the electric motor drive mode to the engine drive mode.

#### ***Allowable Subject Matter***

Claims 5, 10, 12, 13 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TISHA D. LEWIS whose telephone number is 571-272-7093. The examiner can normally be reached on M-Thur 6 AM TO 2:30 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHARLES A. MARMOR can be reached on 571-272-7095. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tdl  
April 27, 2006

  
TISHA LEWIS  
PRIMARY EXAMINER  
AU 3681 4/27/06